



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: General Offshore Corporation

File: B-224452

Date: October 16, 1986

DIGEST

1. The contracting agency properly may make award to a higher priced, higher rated offeror where the solicitation specifically states that the government's primary concern is the offeror's technical capabilities and the agency, in making a cost/technical trade-off, reasonably concluded that the technical advantages of the awardee's offer were significant enough to offset the lower price of protester's proposal.

2. Failure to complete vessel berthing arrangements at the time that best and final offers were submitted does not affect offeror's acceptability for award where the requirement for such arrangements is a performance requirement which need only be satisfied by the contractor after award.

DECISION

General Offshore Corporation (GOC) protests the award of a cost-plus-fixed-fee contract to MAR, Inc. under request for proposals (RFP) No. N00167-85-R-0138, issued by the Department of the Navy as a small business set-aside for the operation and maintenance of Navy research vessel MV Deer Island, to be used for acoustical measuring. We deny the protest.

The RFP specified that the government's primary concern was the offeror's proposed technical/management capabilities for performing the required services, and that the technical/management evaluation factors would be combined to form a merit rating for the offeror that would be "significantly more important" than the offeror's proposed cost. Award was to be made to the responsible offeror who could perform the contract in a manner most advantageous to the government. The RFP also stated that price would be an important evaluation factor that could increase in importance depending on whether proposals of equal technical merit were offered.

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GOC's evaluated price of \$6,627,006 was approximately \$360,000 lower than MAR's evaluated price of \$6,986,970, but the Navy found that MAR's technical evaluation point score of 84.8 (on a scale of 100) represented a sufficient technical advantage over GOC's score of 76.3 to offset this 5.4 percent cost-saving. The Navy considered it particularly significant that MAR's technical proposal was scored 15 percent higher than GOC's in personnel experience, the single most important technical/management category under the RFP. The Navy thus awarded the contract to MAR on the basis that its offer would be more advantageous to the government.

COST/TECHNICAL TRADE-OFF

GOC contends that the award based on MAR's higher priced proposal was improper because there was nothing in the technical/management aspects of MAR's proposal that justified such an award. GOC argues that where technical proposals are ranked so close that they are essentially equal, the agency must award the contract to the lower priced offeror. The Navy asserts that its cost/technical trade-off was consistent with the terms of the RFP, which made technical/management factors more important than cost.

It is permissible for a contracting agency to award a contract to other than the lowest cost offeror if the RFP so provides and the agency's decision to do so is reasonable and consistent with the established evaluation scheme.

Consolidated Group, B-220050, Jan. 9, 1986, 86-1 C.P.D.

¶ 21. The key element in the cost/technical trade-off is the judgment of the agency's contracting officials regarding the significance of the differences in technical merit among the proposals. Lockheed Corp., B-199741.2, July 31, 1981, 81-2 C.P.D. ¶ 71.

We find no basis for questioning the Navy's cost/technical trade-off in selecting MAR's higher scored, higher priced offer as the more advantageous to the government. The RFP specifically stated that cost was not as significant as technical/management considerations, and MAR's technical score was 8.5 points higher than GOC's, 15 percent higher in the most important category, personnel experience. The record shows that the contracting officer specifically determined that MAR's superior technical score offset the potential benefit of GOC's lower price. The contracting officer never determined, as GOC suggests, that the proposals were essentially equal technically, which would have left cost as the determining factor for award. We note that GOC does not challenge the Navy's actual scoring of the proposals.

GOC makes much of the fact that the RFP prescribed certain estimated fixed costs for supplies and services to be used in performing the work, and that the Navy added these costs to the proposed costs in making its cost/technical trade-off. GOC asserts that inclusion of these fixed costs diluted the cost difference between the two proposals, and that the difference in cost would have been nearly 10 percent (instead of 5.4 percent) had these fixed costs been omitted from the Navy's analysis.

The RFP specifically provided that proposals would be evaluated for purposes of award based on total cost, that is, "by adding the total price for all option quantities to the total price for the basic quantity." Since the solicitation's cost schedule included extended prices representing the "estimated ceiling amounts" for the fixed cost supply and service items, and the Navy will actually have to pay for the supplies and services during contract performance, we think their inclusion in the total cost evaluation and the trade-off analysis was reasonable. See Physicon, Inc., 219967.2, Dec. 27, 1985, 85-2 C.P.D. ¶ 723. Moreover, whatever the percentage value assigned to the difference between MAR's and GOC's proposed costs, the fact remains that the contracting officer was fully aware of the actual cost and technical point differences in the proposals, and considered these differences in reaching his conclusion. This is all that was required.

GOC also maintains that the Navy's cost evaluation, and thus the cost/technical trade-off, improperly failed to take into account either the cost impact of MAR's higher handling charges (13.5 percent versus GOC's 8 percent) for the fixed-price supplies to be used in performance, or the difference in the MAR (9 percent) and GOC (8.2 percent) proposed fees.

Handling charges were not listed as separate items on the cost schedule. Rather, the blank spaces provided for the handling charge percentages were included in the parenthetical statements "(not to include overhead, G&A or profit, but may include a handling charge of ___%)," which followed each supply and service line item description. It is clear from this language that the handling charges were part of the "estimated ceiling amounts" that were to be evaluated, and were not to be evaluated as separate costs.

To the extent GOC is arguing that the solicitation should have provided for evaluating the handling charges separately,

the protest is untimely. Protests of alleged solicitation defects must be raised prior to the initial closing date for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986).

Regarding the proposed fees, contrary to GOC's assertion, the record shows that the Navy did include these fees in its total cost evaluation.

ACCEPTABILITY OF MAR'S PROPOSAL

GOC contends that MAR's best and final offer did not include a yearly lease for berthing the vessel as, GOC asserts, was required by the mandatory terms of the RFP, and thus should not have been accepted for award. GOC's argument is based on an RFP requirement that a home port for the vessel be arranged on a yearly basis so as to prevent frequent relocation. GOC states that, during oral discussions, the contracting officer specifically requested that it provide a lease agreement with its best and final offer; that it obtained and submitted such a lease; and that MAR did not have any type of arrangement for waterfront pier space until 19 days after MAR was awarded the contract.

GOC's argument is without merit. The requirement that "the contractor shall provide pier space to be arranged for on a yearly basis (to prevent frequent relocation of vessel within the docking facility)," in our opinion, stated no more than a performance requirement, i.e., to be met only by the contractor. The requirement is listed under the section of the RFP entitled "Description and Statement of Required Services," not under the "Preparation of Proposals" section. The RFP nowhere expressly required offerors to submit yearly leases with their proposals.

We find nothing in the record to indicate that the Navy advised either GOC or MAR during discussions that a lease for berthing on a yearly basis had to be submitted for the offer to be acceptable for award. While GOC alleges that it was asked during discussions to produce a lease agreement, the company has not explained the circumstances surrounding this request or furnished other evidence that the Navy advised GOC that the year lease was a prerequisite to being found acceptable. The Navy denies that it ever established such a requirement. In any case, GOC indicates its cost to secure a lease to submit with its proposal cost approximately \$14,000 more than it cost MAR for its berthing arrangement. There is no indication that eliminating this amount from GOC's proposed cost would have affected the decision to award this \$6.6 million contract to MAR.

The protest is denied.

for Seymour E. Gros
Harry R. Van Cleve
General Counsel